

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE,)
)
 Plaintiff,)
)
)
)
 v.)
)
)
)
WILLIAM L. MARTIN,)
)
)
 Defendant.)

Cr. ID. No. 1408006107

Submitted: March 8, 2016

Decided: March 21, 2016

**COMMISSIONER’S REPORT AND RECOMMENDATION ON
DEFENDANT’S MOTION FOR POSTCONVICTION RELIEF**

William L. Martin, *pro se*.

MANNING, Commissioner

(1) This 21st day of March, 2016, upon consideration of defendant William L. Martin's motion for postconviction relief (the "Motion"), I find the following:

(2) On February 2, 2015, Martin pleaded guilty to one count of Burglary Second Degree and three counts of Burglary Third Degree. According to the terms of the plea agreement, the State agreed to "cap" its recommended unsuspended Level 5 time at eight years. According to the Truth-In-Sentencing form, Martin faced a one year minimum-mandatory period at Level 5, up to a maximum of 17 years at Level 5. A pre-sentence investigation was order with sentencing at a later date.¹

(3) On May 1, 2015, Martin was sentenced on the Burglary Second Degree count to six years at Level 5, KEY Program. As to the three counts of Burglary Third Degree, Martin was sentenced, in total, to nine years at Level 5 suspended after six months at Level 4 DOC Discretion, followed by one year of Level 3 probation.

(4) Martin did not appeal his conviction to the Delaware Supreme Court.

¹ At all times relevant times Martin was represented by counsel from the Office of Defense Services.

(5) On November 3, 2015, Martin filed a motion for Sentence Reduction pursuant to Super Court Crim. Rule 35(b). By Order of the Court, dated February 3, 2016, Martin's motion was denied by the Honorable Vivian L. Medinilla.²

(6) Martin then timely filed his first *pro se* motion for postconviction relief in this case on February 29, 2016.³

(7) Pursuant to Superior Court Civ. Rule 132, Martin's Motion was referred to the undersigned Commissioner on March 8, 2016. Based upon my review of Martin's Motion, I did not see a need for an evidentiary hearing, an affidavit from defense counsel or a response from the State before addressing his claims.

(8) Martin's claims for postconviction relief, in his own words, are as follows:

Ground One: Ineffective Counsel. [A] coercion by counsel to embrace a one year sentence via guilty plea in which [it] went unfulfilled.

Ground Two: Guidelines of Sentence. Burglary 2nd. 1) one year at Level (5) or 2) three year at Level (5) if conviction is for offense that we committed with 5 years.

Ground Three: First Time Offender. Defendant States that he is a first time offender in the State of Delaware in which he is a resident.

² D.I. 50.

³ D.I. 52.

(9) To prevail on an ineffective assistance of counsel claim, a defendant must meet the two-pronged *Strickland* test by showing that: (1) counsel performed at a level “below an objective standard of reasonableness” and that, (2) the deficient performance prejudiced the defense.⁴ The first prong requires the defendant to show by a preponderance of the evidence that defense counsel was not reasonably competent, while the second prong requires the defendant to show that there is a reasonable probability that, but for defense counsel’s unprofessional errors, the outcome of the proceedings would have been different.⁵

(10) When a court examines a claim of ineffective assistance of counsel, it may address either prong first; where one prong is not met, the claim may be rejected without contemplating the other prong.⁶ Mere allegations of ineffectiveness will not suffice; instead, a defendant must make and substantiate concrete allegations of actual prejudice.⁷ An error by defense counsel, even if professionally unreasonable, does not warrant setting aside the judgment of conviction if the error had no effect on the judgment.⁸

⁴ *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984).

⁵ *Id.*

⁶ *Id.* at 697.

⁷ *Younger v. State*, 580 A.2d 552, 556 (Del. 1990).

⁸ *Strickland*, 466 U.S. at 691.

(11) In considering post-trial attacks on counsel, *Strickland* cautions that trial counsel's performance should be reviewed from his or her perspective at the time decisions were being made.⁹ A fair assessment of attorney performance requires that every effort be made to eliminate the distorting efforts of hindsight. Second guessing or "Monday morning quarterbacking" should be avoided.¹⁰

(12) The procedural requirements of Superior Court Criminal Rule 61 must be addressed before considering the merits of any argument.¹¹ Martin's Motion was timely filed, is not repetitive, and is therefore not procedurally barred under Rule 61(i)(1) or (2). I will address any issues regarding procedural default under Rule 61(i)(3) and (4) in conjunction with Martin's specific claims below.

(13) At the outset, I reviewed the Guilty Plea Form and the Truth-in-Sentencing ("TIS") form from Martin's guilty plea. Both were completed accurately and signed by Martin. Based on the forms, there is nothing to indicate that Martin's guilty plea was not made knowingly, intelligently and voluntarily.

(14) Ground One of Martin's Motion states, as best I can discern, that he was "coerced" into pleading guilty by his attorney and thought he would only receive a one year sentence— something which ultimately did not happen. Martin provides no additional facts or argument to support is allegations. As such, they

⁹ *Id.*

¹⁰ *Id.*

¹¹ *See Younger*, 580 A.2d at 554.

are simply conclusory statements of prejudice and should be rejected by the Court.¹²

(15) As to Ground Two, Martin’s claim appears to be that he was not correctly informed of the minimum-mandatory sentence he faced on the Burglary Second Degree count—i.e. did he face a one year or three year minimum-mandatory period of Level 5. There is a hand-written comment on the TIS form noting that the minimum-mandatory sentence for the Burglary Second Degree count will be “3yr if prior. . . .” It is unclear who wrote this comment on the TIS form. Based on this comment, it does appear there *may* have been some question as to the minimum-mandatory sentence Martin faced at the time he entered his guilty plea. The Pretrial Services Report indicates that Martin does indeed have a prior conviction for “Burglary”¹³ from New Jersey, but it dates back to 2000. The record indicates that Martin served a sentence of seven years of incarceration on that charge. Based on this information, Martin’s New Jersey conviction and release from incarceration pre-dated the offenses in this case by more than five years, thus no enhanced penalty was triggered.¹⁴ Because Martin did not face an

¹² “Conclusory and unsupported claims of prejudice are insufficient to establish ineffective assistance; a defendant must make and substantiate concrete claims of actual prejudice.” *Sartin v. State*, 2014 WL 5392047, *2 (Del. Oct. 21, 2014) (citing *Dawson v. State*, 673 A.2d 1186, 1196 (Del. 1986)).

¹³ The degree or facts are not specified so no comparison to Delaware law can be made.

¹⁴ See 11 Del. C. § 825(b)(2).

enhanced penalty due to his prior convicting in New Jersey, the sentence range originally stated on the TIS form is correct. Therefore, Martin was aware of the correct sentence range at the time of his guilty plea and any ambiguity as to the correct sentence range resolved in his favor. This claim is without merit and should be denied by the Court.

(16) Martin's final claim is that he is a "first time offender" in Delaware. Setting aside the fact that this statement is not accurate per the Pretrial Services Report and is seriously misleading in light of his New Jersey convictions, the claim is not cognizable under Rule 61 and should be rejected. In essence, Martin is attempting to supplement and/or reargue his previously denied motion for reduction of Sentence. Aside from being improperly cast, Martin's claim is procedurally barred under Rule 61(i)(4) as formerly adjudicated.¹⁵ This claim should likewise be rejected by the Court.

For the foregoing reasons, Martin's Motion should be **DENIED**.

IT IS SO RECOMMENDED.

/s/ Bradley V. Manning
BRADLEY V. MANNING,
Commissioner

¹⁵ D.I. 50.

oc: Prothonotary
cc: Defendant